THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 18860 OF 2007

Dated 11th October, 2007

Between:

M/s. Lakshmi Constructions,
A Partnership Firm, having its Registered
Office at Flat No.601, Block-F, Vertex Prestige
Apartments, Nizampet Road, Kukatpally, Hyderabad.

…Petitioner.

AND

The District Registrar (Registration & Stamps),
Government of A.P., Ranga Reddy District,
Hyderabad and another.

…Respondents.

ORAL ORDER:

The petitioner herein is a partnership firm and questions the order passed by the Sub-Registrar in proceedings No. 204/07, dated 23.7.2007 demanding an amount of Rs.50,000/- towards deficit stamp duty on advance shown in the Development Agreement-cum-General Power of Attorney.

The petitioner entered into Development Agreement-cum-General Power of Attorney dated 18th April, 2007 with M/s. M.M.R. Constructions which is the absolute owner and possessor of land admeasuring 21,780 sq. yards covered by Survey Nos. 19, 20, 21 and 23 of Gandipet village, Rajendranagar Mandal, Ranga Reddy District. In the said Development Agreement-cum-General Power of Attorney, there is a recital by which, the petitioner has agreed to pay a sum of Rs.10,00,000/- to the owners of the land towards interest-free refundable security deposit. When the said Development Agreement-cum-General Power of Attorney was presented to the second respondent by paying the prescribed stamp duty of Rs.50,000/-, the same was not considered for registration and was kept pending for clarification from the first respondent. Thereafter, based on the clarification issued by the first respondent referring to instructions issued by the Inspector-General (Registration and Stamps) vide D.O.Lr.No.CCRA3/315/E/2003, dated 9.10.2003, the impugned demand is made for payment of deficit stamp duty of Rs.50,000/- by calculating @ 5% on the deposit shown in the document.

In this case, it is the case of the petitioners that the duty on the instrument to be charged with stamp duty has to be calculated as per Schedule 1-A notified under Section 3 of the Indian Stamp Act. It is submitted that as per Article 6(B) of Schedule 1-A, though Rs.5/- for every one hundred rupees or part thereof on the market value or

the estimated cost of the proposed construction/development of such property, as the case may be, as mentioned in the agreement, or, the value arrived at in accordance with the Scheduled rates prescribed by the Public Works Department, is prescribed, but, the Government itself in exercise of its powers under Section 9 (1) (a) of the Indian Stamp Act, 1899 issued orders in G.O.Ms.No.1475, dated 30.7.2005 reducing the stamp duty payable under Article 6(B) of Schedule I-A of the Indian Stamp Act, 1899 in respect of documents relating to Agreements or Memoranda of Agreements of sale or construction/development of immovable properties combined with General Power of Attorney to 1% on the sale consideration or estimated cost of construction/development, as declared by the parties in the document, subject to a maximum of Rs.50,000/- on the condition that the stamp duty so paid shall not be adjustable at the time of registration of subsequent sale-deeds in pursuance of such Agreements-cum-General Power of Attorney registered under the Registration Act, 1908. It is stated that as much as the maximum amount prescribed is only Rs.50,000/- and as the document relates to only Development Agreement-cum-General Power of Attorney, no duty is chargeable on the refundable deposit. It is given only for the purpose of security and will be refunded on completion of the project.

Counter affidavit is filed by the Sub-Registrar, in which, while generally denying the allegations of the petitioner, it is stated that an amount of Rs. 10,00,000/- is paid by the agreement-holder to the owners towards security deposit, which is interest-free and refundable and as such, it was kept pending for clarification from the District Registrar and the District Registrar has clarified that as per the instructions of the Commissioner and Inspector-General of Registration and Stamps vide D.O.Lr.No. CCRA3/315/E/2003, dated 4.10.2003, 5% of the stamp duty is to be collected on the deposited amount. It is further stated that the petitioner under the guise of the document styled as Agreement of Sale-cum-General

Power of Attorney is paying the consideration for the land. As such, on the deposit made as per the agreement, stamp duty has to be paid at 5% as per Article 6(B) of Schedule 1-A annexed to the Indian Stamp Act and G.O.Ms.No.1475 dated 30.7.2005 cannot be made applicable.

It is not in dispute that though chargeability of stamp duty is contemplated under Article 6(B) of Schedule 1-A notified under Section 3 of the Indian Stamp Act, but, however, the Government in exercise of its powers under Section 9(1)(a) which reads:

> "9. **Power to reduce, remit or compound duties:-** (1) The Government if satisfied that it is necessary to do so in the public interest, may, by rule or order published in the Official Gazette,
>
> (a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instrument or any particular class of instrument, or any of the instruments belonging to such class, or any instrument when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and "

has issued orders in G.O.Ms.No.1475, dated 30.7.2005 reducing the stamp duty payable under Article 6(B) of the Schedule I-A. In the said notification issued by the Government, it is clearly stated that in respect of the documents relating to Agreements or Memoranda of Agreements of sale or construction/development of immovable properties combined with General Power of Attorney, stamp duty of 1% on the sale consideration or estimated cost of construction/development, as declared by the parties in the document subject to a maximum of Rs.50,000/- has to be levied. In this case, from the recitals of the document, it is not in dispute that the amount, which is mentioned is only a refundable deposit by way of security for the proposed construction and the document is titled as Development Agreement-cum-General Power of Attorney. In that view of the matter, the said orders fixing the stamp duty at 1% subject to maximum of Rs.50,000/- are applicable even to the documents where the security deposit amount is also mentioned. If

the said G.O. is applied, the stamp duty payable is 1% subject to a maximum of Rs.50,000/-. As much as the amount of deposit is made by way of security deposit, the same cannot be construed as an advance for transfer of property so as to rely on the clarification issued by the Inspector-General of Stamps and Registration in D.O.letter dated 9.10.2003. Even the said clarification is anterior to the date of issuance of G.O.Ms.No.1475 reducing the stamp duty in exercise of the powers conferred by clause (a) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899. In that view of the matter, there is no reason or justification for not applying the orders issued by the Government in G.O.Ms.No.1475, dated 30.7.2005. Therefore, the demand issued based on the clarification runs contrary to orders issued by the Government in G.O., and, there is no basis for charging of the stamp duty of 5% on the deposit amount to the owners as stated in the Development Agreement-cum-General Power of Attorney.

For the reasons stated supra, the impugned notice is hereby quashed and the respondent No.2 – Sub-Registrar, Registration and Stamps, Rajendranagar, is directed to consider the document presented on 19.4.2007 by the petitioner for registration without demanding any stamp duty on the deposit amount, but, however, such consideration shall be subject to compliance of the provisions of the Indian Stamp Act, Registration Act and the rules made thereunder.

The writ petition is allowed. No costs.

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11-10-2007 **R.SUBHASH REDDY, J.**

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